ALTON B. HORNBACK
5650 Bloch Street
San Diego, CA 92122
(858) 453-3334

Petitioner, Pro Se

FILED
08 MAY 13 PM 4:11
ORIGINAL
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

NUNC PRO TUNC
MAY 09 2008

In The UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALTON B. HORNBACK, Petitioner, v. The UNITED STATES OF AMERICA, Respondent.	Case No. 08-CV-0127 WQH BLM PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS No Oral Argument Required Date: 9 June 2008 Time: 11:00 AM Courtroom: #4 The Honorable William Q. Hayes

I. INTRODUCTION

Respondent's MOTION TO DISMISS is based on two issues of law: (i) alleged failure of Petitioner to exhaust his administrative remedies; and (ii) alleged lack of subject matter jurisdiction.

In its MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS ("MEMO") at 2, Respondent stated:

> Hornback's petition for mandamus should be dismissed because: (i) Hornback cannot prove that he is entitled to drastic remedy of mandamus relief, and (ii) Hornback has not met his burden of establishing that this Court has jurisdiction over his petition.

Petitioner will now show that neither is correct.

Moreover, drastic wrongs beget drastic remedies!

RECEIVED
MAY 13 2008

II. ARGUMENT

1. This Court Has Subject Matter Jurisdiction

In its MEMO at 3, Respondent stated:

> Second, Hornback's petition only properly invokes the Mandamus Statute 28 U.S.C. 1361. That statute, however, does not provide a waiver of sovereign immunity.

That first sentence is not correct. The operative statute which provides sovereign immunity in this action, was correctly set forth in the PETITION at 7, line 19, as 35 U.S.C. 131[1].

2. Petitioner Has Exhausted His Administrative Remedies

(a) 35 U.S.C. 251 **NOT** Applicable

In its MEMO at 2 Respondent stated (original emphasis):

> The USPTO simply cannot revise his patented claims until they are substantively reviewed to determine patentability. Rather, as the USPTO has repeatedly told him, Hornback must file a proper request for a "reissue" of his patent in accordance with 35 U.S.C. 251.

The operative portion of 35 U.S.C. 251 is the first paragraph which states in its entirety (emphasis added):

> Whenever any patent is, through error without any deceptive intention, deened wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Director shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

---

[1] On page 1 of that PETITION, Petitioner made a typographical error in stating that the operative statute was 37 U.S.C. 131 instead of 35 U.S.C. 131. However, since the correct statute was set forth on page 7, Petitioner deemed it unnecessary to amend the PETITION. He regrets this error.

Clearly, by requiring the patentee to pay the fee and amend the application, even though allowed on 17 September 1987, (A22), 35 U.S.C. 251 applies to the reissuance of a patent, where the errors in the patent were the fault of the patentee, not the PTO.

(b) PTO Refused to Reissue Patent Pursuant to 35 U.S.C. 251

On 2 August 2007 Petitioner submited an "Amended Petition to Reissue Patent No. 6,079,666". In that Amended Petition at 2 (A38) Petitioner stated:

> Alternatively, if the PTO can show that any error in either the patent specifications or patent claims is the fault of of Petitioner, then it should do so, and reissue the corrected patent pursuant to 35 U.S.C. 251, quality control and the above-noted apology for the inconvenience to Petitioner, notwithstanding. In that unlikely event, Petitioner has enclosed a check (Enclosure 5) in the amount of $395.00 as the required "small entity" reissue fee.

On 8 January 2008, the PTO returned the check and refused to reissue the patent or even to issue a "CERTIFICATE OF CORRECTION": "The errors requested to be corrected will not be entered. The broadening of claims may affect patentability of claims". (A41).

Quite the contrary! The requested corrections (A40) would narrow, not broaden, those claims. The indefinite terms in the printed claims such as "wide bandwidth" (A31; Col. 7, L 12; Col. 8, L 7) and "low-pass" (A31; Col. 7, L 21; Col. 8, L 7) rendered those claims so broad that Counsel for Defense in Case No. 99-38 C, correctly asserted those claims to be invalid for failure to comply with 35 U.S.C. 112. (A61).

///

///

///

///

3. Allowed Claims 3-6 Were Those Filed 11 May 1987

In Respondent's EXHIBIT J at 5-6 (237-238), the PTO stated:

> Petitioner did not follow either rule. Therefore the effective result of the petitioner filing the Supplemental Response, using the exact same numbering (3-6) was improper. Petitioner should have numbered the substitute claims as claims 7-10. At allowance, the examiner mailed the Notice of Allowance indicating that claims 3-6 would be allowed. Claims 3-6, filed (sic) May 1, 1987 [were] properly allowed. However, claims 3-6 mailed (sic) May 6, 1987 were, from a review of the record, never examined, but considered "duplicate" claims since they were not presented in the manner required by 37 CFR 1.121 or 1.126.

That explanation resolves a 20-year-old ambiguity:

EXHIBIT 12 (A52-A53) shows that, on 27 May 1987, the PTO filed and responded to two sets of claims -- the first on 5/4/87, the second on 5/11/87. How can the same set of claims simultaneously be both "pending" (Item 1, Id.) and "allowed" (Item 3)? Answer: They are **NOT** the same set. By their very order, Item 1 indicates that pending claims 3-6 were those filed 5/4/87, while Item 3 indicates that allowed claims 3-6 were those filed 5/11/87.

That conclusion is supported by a statement by Counsel for Defense during a status conference on 19 March 2001, Case No. 99-38 C, that he had uncovered some errors in the patent claims. (See Request for Production and Things No. 6, A55). But the printed claims are, verbatim, comma for comma, period for period, identical to the first set, filed 4 May 1987. Thus, the point of reference for the observed errors in the printed claims could only have been the claims filed 11 May 1987, not those filed 4 May 1987.

Moreover, patent examiners have been shot at dawn for allowing claims such as those filed 5/4/87 which contain the indefinite terms cited above. (See Section 2(b) above, last paragraph.

Had the PTO included allowed claims 3-6 as requested (A58), instead of cancelled claims 1-2 (A14), with the copy of the patent application it sent Petitioner on 9 June 1999 for validation[2], and not lied about why it refused to do so (A59 vis-a-vis A57-A58), this PETITION would have been unnecessary. (See PETITION at 5-6).

4. Profound Effect of Classification of Patent Application

In Respondent's EXHIBIT J at 7 (239), the PTO stated:

> An examination of this file reveals that patentee is unfamiliar with patent prosecution procedure. Lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed.

But if Petitioner had disclosed his application to a patent attorney during patent prosecution -- which was closed 17 September 1987 (A22) -- and for 12 years thereafter, he would have been subjected to 2 years in prison and a $10,000 fine (35 U.S.C. 186), and forfeiture of his patent rights (35 U.S.C. 182). (A21).

To verify the above, consider the restrictions set forth in the Secrecy Order the PTO imposed on the patent application on 24 August 1987, allegedly pursuant to 35 U.S.C. 181 (A21):

> The subject matter of the above-identified application has been determined to be encompassed by .... E.O. 12356, "National Security Information" and thus is subject to the "Industrial Security Manual for Safeguarding Classified Information". [ISM].
>
> The principals shall protect the subject matter as required by the Industrial Security Manual for Safeguarding Classified Information and may disclose the subject matter of the above-identified application to other persons having the requisite clearance on a "need-to-know" basis ... .

[2] For 13 years Petitioner was denied access to his own patent application while it was classified at the level of SECRET.

Moreover, on 7 August 1998, the PTO stated (A63, attached):

> The application is classified as SECRET[3] and is under Secrecy Order which allows access to authorized personnel; i.e. appropriate clearance on a "need-to-know" basis.

To that end, in its MEMO at 3, Respondent stated:

> Pursuant to 35 U.S.C. 181, the United States Patent and Trademark Office ("PTO") entered a secrecy order for Hornback's patent application on August 24, 1987. Id. The secrecy order unequivocally notified Hornback that restrictions applied to his patent application. Id.

That first sentence is not correct. 35 U.S.C. 181 was enacted by Congress in 1952. However, Executive Order 12356, and its implementing directive, the ISM -- the source of those restrictions -- were not issued until 1982! Therefore, in 1952 Congress did not issue, and could not have issued, a Secrecy Order which mandated compliance with Executive Order 12356 and the ISM, neither of which even existed until 30 years after it enacted that statute. As a result, that Secrecy Order was not imposed pursuant to 35 U.S.C. 181. Accordingly, those restrictions were not legally binding on Petitioner, and no Court has ever held otherwise!

For 13 years, those restrictions prevented Petitioner, a private citizen with no personnel or facility security clearance, from possessing a copy of his own patent application, and from disclosing the subject matter in that application to a patent attorney for legal representation. See DECLARATION OF NED A. ISRAELSEN (A64), a registered Patent Attorney, who, on 29 October 1992, stated under oath: "4. Because I could not get access to the patent application, I was unable to represent Mr. Hornback".

---

[3] See PETITION at 2/fn for definition of "SECRET".

Those unauthorized harsh restrictions resulting from the classification of the patent application at the level of SECRET pursuant to Executive Order 12356, are a far cry from the benign restrictions actually authorized by Congress in 35 U.S.C. 181, as set forth in the so-called "TYPE I" Secrecy Order which states (A66):

> The principals may disclose, for legitimate business purposes, the subject matter of the above-identified application to a U.S. citizen or to a person who is both admitted lawfully into the United States for permanent residence and is located in the United States provided the U.S. citizen or person is furnished with a copy of this Secrecy Order and is informed that this Secrecy Order is applicable to the subject matter disclosed.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

III. SUMMARY AND CONCLUSION

Whenever the subject matter in a patent application is sufficiently sensitive to warrant protection in the interest of national security, the Government may either: (i) impose a Secrecy Order (A65) on that application pursuant to 35 U.S.C. 181, which withholds the patent from issue, and then compensate the inventor under 35 U.S.C. 183; or (ii) if, as here, unauthorized disclosure could cause serious damage to the national security (see PETITION at 2), then acquire a proprietary interest in (i.e., take) that application (A69) and classify it at the level of SECRET.

But once the application is declassified, the Secrecy Order rescinded, and the issue fee timely paid, the inventor is entitled to a patent under 35 U.S.C. 131, which conforms to the allowed patent application (A22), and not bastardized by errors inserted by the PTO either for business or for counterintelligence purposes.

Being ever mindful of the national security issues involved, Petitioner permitted those issues to trump all issues regarding PTO rules. He, therefore, acted as a pro se applicant. As such, he did, indeed, fail to number amended claims 3-6 as new claims 7-10. So if this Court grants instant MOTION based on that one oversight, while overlooking the documented PTO lies and shenanigans, it would still be a small price to pay for the satisfaction of knowing that, in the process, no national security information was compromised.

Drastic wrongs? You bet!

WHEREFORE, Respondent's MOTION TO DISMISS should be denied.

Date 8 May 2008

Alton B. Hornback

Alton B. Hornback
Petitioner, Pro Se
(858) 453-3334

SUPPLEMENTAL APPENDIX 1

EXHIBIT NUMBER/TITLE	Page
18. Internal PTO e-mail, Re: Access to Patent Application --	A63
19. Declaration of Patent Attorney Ned A. Israelsen --------	A64
20. "TYPE I" Secrecy Order ----------------------------------	A65
21. ISM Excerpts, Re: "taking" ------------------------------	A68

EXHIBIT 18

Jordan, Charles

To: Tyson, Karin
Subject: RE: petition for access for application under secrecy order

The application is classified as SECRET and is under Secrecy Order which allows access to authorized personnel; i.e. appropriate clearance on a "need-to-know" basis. The case cannot be released from our area but could be reviewed here. I'm assuming the request is coming from Dept. of Justice regarding a Civil action. Give me a call if you have further questions.

From: Tyson, Karin
Sent: Friday, August 07, 1998 12:34 PM
To: Jordan, Charles
Subject: petition for access for application under secrecy order

I have an application -- application number 06/859,033 in which a petition for access has been filed. The petitioner has a security clearance sufficient to see the file. Any tips on the conditions under which I should allow access?

- A63 -

D000062

DECLARATION OF NED A. ISRAELSEN EXHIBIT 19

I, Ned A. Israelsen, declare as follows:

1. I am an attorney at law, admitted to practice before State and Federal Courts in the State of California. I am also a patent attorney, registered to practice before the United States Patent and Trademark Office. Since 1984, I have been engaged in the private practice of law in California with the firm of Knobbe, Martens, Olson & Bear.

2. Mr. Alton Hornback was interested in having me represent him in a matter relating to a certain patent application on which he was an inventor, dealing with a boresight error slope sensor. In order to represent Mr. Hornback, it was necessary for me to examine his patent application.

3. It was my understanding that an Air Force patent attorney, Mr. Donald Singer, was responsible for Mr. Hornback's patent application. I contacted Mr. Singer on or about September 14, 1989, to inquire whether I could examine the application. Mr. Singer informed me that I could not see the application, because it was classified, and because I had no current security clearance.

4. Because I could not get access to the patent application, I was unable to represent Mr. Hornback.

5. I declare under penalty of perjury that the foregoing is true and correct.

Date: Oct. 29, 1992 Signed: [signature]
Ned A. Israelsen

Type II

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.

EXAMINER
EXHIBIT 2b

ART UNIT	PAPER NO.

DATE MAILED:

SECRECY ORDER
AND PERMIT FOR FOREIGN FILING IN CERTAIN COUNTRIES
(Title 35, United States Code, §§ 181-188)

Sponsoring Agency & Address: Mr. Donald Singer
Department of Air Force, AF/JACP
1900 Half Street, S.W.
Washington, DC 20324
(202) 475-1386

Notice: To the patent applicant(s); his, her, or their heirs; and any and all of the assignees, licensees, attorneys and agents (hereinafter designated principals):

The sponsoring agency listed above has determined that this patent application discloses critical technology with military or space application, the unauthorized disclosure of which would be detrimental to the national security and which is subject to export control under:

ECCN[1] Reference:		ITAR[2] Reference:
Goods Accompanied by Sophisticated Know-How	Keystone Equipment or Materials	Goods Accompanied by Sophisticated Know-How

YOU ARE ORDERED TO KEEP THE SUBJECT MATTER SECRET (as required by 35 U.S.C. §181) and YOU ARE FURTHER ORDERED NOT TO PUBLISH OR DISCLOSE THE SUBJECT MATTER TO ANY PERSON EXCEPT AS SPECIFICALLY AUTHORIZED HEREIN.

[1] Export Commodity Control Number (ECCN) on the Commodity Control List, Export Administration Regulations, U.S. Department of Commerce; Supplement No. 1 to 15 CFR §399.1.

[2] International Traffic in Arms Regulations (ITAR), Office of Defense Trade Controls, U.S. Department of State; 22 CFR §§120-130.

Any other patent application already filed or hereafter filed in the U.S. or any foreign country which contains any significant part of the subject matter of the above-identified application falls within the scope of this Order. If such other patent application is not under a Secrecy Order imposed by the U.S. Patent and Trademark Office, it and the common subject matter must be brought to the attention of the Director, Group 220, Attention: Licensing and Review, U.S. Patent and Trademark Office, Washington, D.C. 20231 as soon as possible.

Publication or disclosure of the subject matter of the above-identified patent application, except as authorized herein or subsequently by the Commissioner of Patents and Trademarks, may subject the person publishing or disclosing the subject matter to the penalties of 35 U.S.C. 182, 185 and 186 (1952).

This Order should not be construed in any way to mean that the Government has adopted or contemplates adoption of the invention disclosed in this application and it is not any indication of the value of such invention.

The principals may disclose, for legitimate business purposes[3], the subject matter of the above-identified application to a U.S. citizen or to a person who is both admitted lawfully into the United States for permanent residence and is located in the United States provided the U.S. citizen or person is furnished with a copy of this Secrecy Order and is informed that this Secrecy Order is applicable to the subject matter disclosed.

Legitimate business purposes include selling or producing products for the commercial domestic marketplace, or for the commercial foreign marketplace providing that any required export license is obtained. Legitimate business purposes also include selling or otherwise disclosing technical data to foreign contractors or foreign governments after receiving the required export license or approval by the U.S. Government.

The principals shall notify the Commissioner of Patents and Trademarks if a validated license is obtained from the Office of Export Administration, U.S. Department of Commerce, or a license is obtained from the Director, Office of Defense Trade Controls, U.S. Department of State, under regulations governing the export of technical data (15 CFR §379 of the Export Administration Regulations or 22 CFR §125 of the International Traffic in Arms Regulations).

The subject matter of the above-identified application has been determined not to be encompassed by Executive Order 10865, entitled "Safeguarding of Classified Information Within Industry" or Executive Order 12356, entitled "National Security Information" and thus is not subject to the "Industrial Security Manual for Safeguarding Classified Information." However, since the disclosure of the subject matter would be detrimental to the national security, the subject matter must be safeguarded under conditions that will provide adequate protection and prevent access by unauthorized persons. When copies of the subject matter are no longer needed, they should be destroyed by any method that will prevent disclosure of the contents or reconstruction of the document.

---

[3] The term "legitimate business purposes" is to be interpreted consistent with 32 CFR Part 250 (49 FR 484040, December 10, 1984), originally published as DOD Directive 5230.25, November, 1984, entitled "Withholding of Unclassified Technical Data From Public Disclosure."

-A66-

The principals are permitted, subject to the conditions stated hereinafter, to file and prosecute a corresponding application for patent in each of the following countries: Australia, Belgium, Canada, ~~Denmark~~, France, Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Turkey and the United Kingdom. The papers for each foreign application and its prosecution shall be transmitted to the sponsoring agency, identified herein, for forwarding through diplomatic channels for filing in the foreign country either directly by the principals or through the principals' foreign patent attorney or agent if authorized by the foreign government. Correspondence exclusively relating to payments of taxes and fees need not be sent through the sponsoring agency and diplomatic channels provided that such correspondence contains no information pertaining to the subject matter of the above-identified application.

International reciprocal agreements providing for the filing of patent applications under a Secrecy Order in the above-identified countries require the principals to furnish to the sponsoring agency identified herein (in addition to the papers to be filed in the foreign patent office) a copy of the specification (including any drawings annexed thereto, any resume and the claims included in the patent application) filed in the patent office of the foreign country. This copy will be furnished to the appropriate defense agency of the foreign government for information only and without prejudice to any rights of the principals. The filing date and serial number of the patent application should also be furnished to the sponsoring agency.

The principals shall request the foreign patent office to place in secrecy the foreign patent applications corresponding to the above-identified application and shall furnish a copy of this Secrecy Order and permit with the first papers to be filed in the foreign patent office.

The use of this permit to file in a foreign country shall constitute a waiver, unless otherwise required by international agreements, of any claim to compensation for loss or damage due solely to the imposition of secrecy or similar treatment of the invention. Belgium, France, the Federal Republic of Germany, the Netherlands, Norway, Turkey and the United Kingdom normally require a separate document confirming such a waiver.

In the case of Japan, the applicant shall ensure in its contract with its patent attorney that the patent attorney shall submit to the Japanese Patent Office a certified copy of this Secrecy Order and Permit. The submission of this permit to the Japanese Patent Office is considered notification to the Government of Japan of the Secrecy Order status of the above-mentioned application and a corresponding Japanese application will be considered an Agreement Application referred to in paragraph 3(a) of the Protocol to the 1956 United States-Japan Agreement.

Please contact the above sponsoring agency for information concerning the imposition or status of the Secrecy Order. Contact the Licensing and Review Branch of the Patent and Trademark Office (703/308-1718) for information regarding the examination of this patent application.

Robert E. Garrett
Director, Special Laws Administration

-A67-

DoD 5220.22-M

EXHIBIT 21

INDUSTRIAL SECURITY MANUAL FOR SAFEGUARDING CLASSIFIED INFORMATION

DEPARTMENT OF DEFENSE · UNITED STATES OF AMERICA

DEPARTMENT OF DEFENSE

JANUARY 1991

classification or upgrading to a higher classification, or believe that the security classification guidance provided is improper or inadequate, are required to discuss such issues with the pertinent User Agency for remedy. If a solution is not forthcoming, and the contractor believes that corrective action is still required, a formal challenge shall be made to the User Agency that originally classified the information. Such challenges shall include a description sufficient to identify the issue, the reasons why the contractor believes that corrective action is required, and any recommendations for appropriate corrective action. In any case, the information in question shall be safeguarded as required by this Manual for its assigned or proposed level of classification, whichever is higher, until action is completed. If no answer is received within 45 days, the CSO may be requested to provide assistance in obtaining a response. The fact that a contractor has initiated such a challenge will not, in any way, serve as a basis for adverse action by the User Agency involved. If a contractor believes that adverse action did result from a classification challenge, full details should be furnished promptly to the CSO for resolution.

4-105. Contractor Developed Information. Whenever a contractor develops an unsolicited proposal or originates information not in the performance of a classified contract, the following rules shall apply:

a. If the information contained in the proposal or other material, was previously identified by a User Agency as classified, the proposal or other material shall be classified in accordance with an appropriate DD Form 254, classification guide, or source document and marked as required by this Chapter.

b. If the information does not fall within a. above, and the contractor believes the proposal or other material contains information which may, or should, be classified, the contractor is requested to protect the information as though classified at the appropriate level and submit it to a User Agency that has an interest in the subject matter for a classification determination. In such a case, the following protective marking, or a similar marking that clearly conveys the same meaning, shall be used:

CLASSIFICATION DETERMINATION PENDING- Protect as though classified (TOP SECRET, SECRET, or CONFIDENTIAL).

This marking shall appear conspicuously at least once on the material but it is not necessary to further mark it until a classification determination is received. In addition, contractors are not precluded from marking such material as company-private or proprietary information. Pending a determination by a User Agency, the contractor is requested to handle and protect the information as prescribed by this Manual for the classification level recommended. It should be noted, however, that E.O. 12356 prohibits a User Agency from classifying information over which the Government has no jurisdiction. The proposal or other material submitted may not be classified by a User Agency unless: (i) it incorporates classified information to which the contractor was given prior access, or (ii) the Government first acquires a proprietary interest in the information.

4-106. Classified Information Appearing in Public Media. The fact that information currently classified by a UA has appeared in a public medium does not mean that it is automatically declassified. Contractors shall continue the classification until formally advised to the contrary by the User Agency. Questions as to the propriety of continued classification in these cases should be brought to the immediate attention of the UA.

4-107. Downgrading or Declassifying Classified Information. Information is downgraded or declassified based on the loss of sensitivity of the information due to the passage of time or on occurrence of a specific event. Information that continues to meet the classification criteria, despite the passage of time, shall remain classified and continue to be protected. Contractors downgrade or declassify information based on the guidance provided in a DD Form 254, upon formal notification, or as shown on the material. These actions constitute implementation of a directed action rather than an exercise of the authority for deciding the change or cancellation of the classification. At the time the material is actually downgraded or

-A69-

HORNBACK v. United States
U.S. District Court, No. 08-CV-0127 WQH BLM

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare that I am a citizen of the United States over the age of eighteen years and a resident of San Diego County, California; my home address is 5650 Bloch Street, San Diego, California 92122; I am a party to this action, currently as Plaintiff Pro Se; and

On 8 May 2008 I deposited in the United States mail at San Diego, California, in the above-titled action, a package with the requisite first class postage, containing the requisite number of copies of:

PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

and addressed to:

Clerk,
United States District Court
880 Front Street, Suite 4290
San Diego, CA 92101-8900

and

Steve B. Chu
Assistant United States Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
(619) 557-5682

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Diego, California on 8 May 2008.

Alton B. Hornback

Alton B. Hornback
(858) 453-3334